



New Marine Pollution Laws for PNG

Consultation Paper

March 2008

1. Introduction - the need for new laws

Marine resources are of utmost importance to Papua New Guinea (PNG):

- which has some of the highest marine biodiversity in the world,
- which hosts some of the last remaining pristine coral reefs of the world,
- where coastal peoples are still reliant on subsistence fishing for day-to-day survival,
- where marine-based tourism and diving hold significant economic potential; and
- where ongoing development of commercial fisheries, aquaculture and other marine-based industries such as seabed mining forms a vital part of the country's economic future.

These rich marine resources face a number of significant threats, including pollution from ships. The country hosts a number of international shipping lanes, including the main transit routes between the major east coast ports of Australia and their export markets in north Asia. There have been several incidents resulting in pollution in recent years. The ongoing development of the oil and gas industry in PNG, including the building of new ports and terminals, as well as emerging industries such as seabed mining, also pose potential risks in terms of marine pollution.

As part of efforts to address these risks, the PNG National Maritime Safety Authority (NMSA) is developing new marine pollution legislation for PNG. The new laws will implement all of the relevant Conventions of the International Maritime Organization (IMO), and provide PNG with a 21st Century legal regime for marine environment protection.

2. Proposed structure of the new Acts

Subject to consultation, it is proposed that the new marine pollution laws for PNG may initially comprise four separate “sister” Acts; three addressing *technical* issues relating to marine pollution prevention and control, and one addressing *financial* issues relating to civil liability, compensation and cost-recovery for marine pollution damage. Each Act will implement the relevant international Conventions; as follows:

- *Marine Pollution (Ships & Installations) Act*

This proposed Act would address *technical* issues, including prevention of pollution from:

- ships (as per MARPOL Convention plus AFS Convention).
- offshore installations, including offshore oil and gas activities.

- *Marine Pollution (Sea Dumping) Act*

This proposed Act would address *technical* issues, including prevention of pollution from:

- Dumping and incineration of wastes at sea (as per London Protocol).

- *Marine Pollution (Preparedness & Response) Act*

This proposed Act would address *technical* issues, including:

- Powers of intervention relating to marine casualties (as per Intervention Convention and Protocol).
- Response to marine pollution incidents (as per OPRC Convention and its HNS Protocol).

- *Marine Pollution (Liability & Cost Recovery) Act*

This proposed Act would address *financial* issues, including:

- A levy on shipping to fund a base-level of NMSA’s marine pollution prevention and control activities.
- Civil liability, compensation and cost recovery for:
 - Oil pollution damage from tankers (as per 92 CLC, 92 Fund and Supplementary Fund Conventions).
 - Oil pollution damage from ships’ fuel oil (as per Bunkers Convention).

- Damage from chemical spills (as per HNS Convention).

A fifth Act may also be developed to implement the IMO Ballast Water Convention in PNG.

The Acts will also provide for the making of Regulations by NMSA, as required.

3. Administration and enforcement of the new Acts

Subject to consultation, it is proposed that the new marine pollution laws for PNG will be administered primarily by NMSA, with enforcement roles for certain parts being delegated to other Departments and Authorities.

It is proposed that in addition to NMSA, officers from the National Fisheries Authority (NFA), the Department of Environment and Conservation, the National Police and other relevant bodies, would be appointed as Inspectors under the new Acts, and that they will receive proper training and capacity building in administering and enforcing the Acts, along with clear guidelines and manuals on investigation and enforcement procedures.

4. Existing Acts to be repealed

The new marine pollution laws will replace the following existing (and significantly outdated) Acts that are currently administered by NMSA:

- *Prevention of Pollution of the Sea Act 1978* (consolidated in 2003)
- *Protection of the Sea (Shipping Levy) Act* (consolidated in 2003)
- *Dumping of Wastes at Sea Act 1978*(consolidated in 2003)

5. Legislative drafting team

The new marine pollution laws for PNG are being drafted by a consultancy team from the Cairns-based marine law firm Brian White and Associates (BWA) (www.bwamarine.com), supported by legal, operational and management staff at NMSA in Port Moresby. The Principal of BWA, Mr Brian White, is a marine lawyer and ex- ship's Master with over 25 years experience in PNG, including drafting much of the country's existing marine legislation.

BWA's main consultant for this exercise is Mr Steve Raaymakers of EcoStrategic Consultants (www.eco-strategic.com), who has nearly 20 years of experience in implementing IMO Conventions, including five years working at IMO in London, and two years at the South Pacific Regional Environment Programme (SPREP), where he led the development of regional model marine pollution laws for Pacific Island countries.

During the legislative drafting process the team will work closely with their counterparts at NMSA, to build capacity and pass-on knowledge and skills, to prepare NMSA staff for future legislative development roles.

6. Consultation Process

During the development of the new marine pollution laws the NMSA will consult closely with all relevant stakeholders, to ensure that the new laws are consistent with all relevant government policies and other laws, and adopt a coordinated, whole-of-government approach. It is also important that the new laws meet the needs of the community and industry. Stakeholders that will be consulted include, but are not limited to:

- Relevant government departments and authorities, including:
 - Attorney-General's Department
 - Department of Transport (DoT)
 - Department of Environment and Conservation (DEC)
 - Department of Petroleum and Energy (DPE)
 - Disaster Management Centre - Department of Prime Minister.
 - National Agriculture Quarantine and Inspection Authority (NAQIA)
 - Mineral Resources Authority (MRA)
 - National Fisheries Authority (NFA)
 - Ports Corporation of PNG
 - Coastal Provincial Governments
- The shipping, ship-repair, ports, oil, gas, mining, fisheries and dive industries.
- Seafarers and their Union.
- Environmental NGOs and other community groups.
- International groups such as IMO, IOPC Funds and Tokyo MoU on Port State Control.
- Neighbouring Governments (Australia, Indonesia, Solomon Islands).

Consultation exercises will include participatory workshops and meetings with these groups, as well as provision of Consultation Drafts of the new Bills to these groups for review and comment. The main consultation phases are highlighted in hatching on the indicative timeline in Attachment 1.

7. Time-line & Next stages

The new marine pollution laws for PNG will be developed over a 12 month time-line, from October 2007 to October 2008, according to the indicative timeline in Attachment 1.

At March 2008 the consultancy team had completed the following:

- Task 1: Develop Legislative Framework
- Task 2; Present Legislative Framework to NMSA.
- Task 3: Develop Initial Draft Legislation
- Task 4: Review Initial Drafts of the legislation.

The next stage is Task 5 - develop Consultation Draft legislation; which will then be used for consultation with and review by stakeholders through workshops in PNG in May/June 2008.

Further information:

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Acronyms for international Conventions

AFS Convention: International Convention on the Control of Harmful Anti-fouling Systems on Ships.

Bunkers Convention: International Convention on Civil Liability for Bunker Oil Pollution Damage.

BWM Convention: International Convention for the Control and Management of Ships' Ballast Water and Sediments.

92 CLC: International Convention on Civil Liability for Oil Pollution Damage, 1992.

92 FUND: International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

Intervention Convention: International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

Intervention Protocol: Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil.

London Protocol: 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

MARPOL: International Convention for the Prevention of Pollution from Ships.


OPRC/HNS: International Convention on Oil Pollution Preparedness, Response and Cooperation and the OPRC Hazardous and Noxious Substances Protocol.

Supplementary Fund: Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

Attachment 1: Indicative Timeline for development of new marine pollution laws for Papua New Guinea

Task	Oct 07	Nov 07	Dec 07	Jan 08	Feb 08	March 08	April 08	May 08	June 08	July 08	Aug 08	Sept 08	Oct 08
1: Develop Framework:		9											
2: Present Framework:		16											
3. Develop Initial Draft			21	Xmas Break	25								
4: Review Initial Draft							28						
5: Produce Consultation Draft								30					
6: Review Consultation Draft													
7: FINAL Legislation:													
8: Develop Initial Regs													
9: Review Initial Regs.													
10: Produce Consultation Regs.													
11. Review Consultation Regs.													
12: FINAL Regs:													

 = drafting phase

 = consultation phase